

Agenda

Item #1

**Ratification of Minutes of September 24,
October 10 and November 3, 2014 Meetings**



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Approved:

Minutes of the September 24, 2014, Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: Margaret E. Matheson, Esq.; André G. Duchette, Esq.; Hon. Jane Amero;

Absent: Walter McKee, Esq.; Michael T. Healy, Esq.

Staff: Jonathan Wayne, Executive Director; Phyllis Gardiner, Counsel

Margaret Matheson convened the meeting at 9:00 a.m.

The Commission considered the following items:

1. Ratification of Minutes of August 27, 2014 Meeting

Ms. Amero moved to accept the minutes with a minor change. Mr. Duchette seconded.

Motion passed (3-0).

2. Request for Waiver of Late-Filing Penalty – Hon. Amy F. Volk

Mr. Wayne said that Rep. Amy F. Volk is a candidate for the State Senate, District 30. Her campaign treasurer filed the 11-Day Pre-Primary report on May 30, 2014. The report, as initially filed, was incomplete because it did not contain contributions totaling \$3,270 that were received by the campaign during the report period. The report was considered late because it did not substantially conform to the disclosure requirements of the Election Law. The preliminary penalty for the late report was \$3,413.89. Representative Volk requested a waiver of the preliminary penalty, explaining that the treasurer was unaware that others in the campaign received contributions that were not given to him. After the report was amended, the contributions were known to voters nearly five months before the general election.

Mr. Duchette noted that the penalty was higher than the contribution. Ms. Matheson moved to adopt the staff recommendation and reduce the penalty to \$100. The motion was seconded by Ms. Amero, and passed unanimously.

3. Request for Waiver of Late-Filing Penalty – Gary Capehart

Mr. Wayne said Gary Capehart is a candidate for the Maine House of Representatives, District 125. On July 3, 2014, he entered information into the 42-Day Post-Primary Report (due July 22). The report was not filed until July 28, 2014. The preliminary for the late filing was \$18. Mr. Capehart requested a waiver because he thought he had filed the report on July 3, 2014 before leaving for vacation, and did not receive the e-mail notice of the late report until his return on July 27th.

Ms. Amero moved to adopt the staff recommendation to find that the report was late and to waive the penalty. The motion was seconded by Mr. Duchette, and passed unanimously.

4. Request for Waiver of Late-Filing Penalty – Paige Katharine Brown (0:06)

Mr. Wayne said Paige Brown is a candidate for the Maine House of Representatives, District 97. Ms. Brown's 42-Day Post-Primary Report was filed seven days late on July 29, 2014. The preliminary penalty was \$283.44. Ms. Brown requested a waiver of the preliminary penalty because she was traveling at the time the report was due and had limited internet access.

Mr. Duchette moved to adopt the staff recommendation and reduce the penalty to \$100. The motion was seconded by Ms. Amero, and passed unanimously.

5. Request for Waiver of Late-Filing Penalty – Citizens for Justice, Inc. PAC (0:10:30)

Mr. Wayne said on June 5, 2014, the Citizens for Justice PAC made \$5,500 in contributions to other PACs. The Citizens for Justice PAC was required to disclose the payments in 24-hour reports. The PAC filed the report 46 days late on July 22, 2014. The preliminary penalties for the late reports total \$2,530. The PAC requested a waiver of the preliminary penalties because they are disproportionately high relative to the harm to the public and the PAC's financial activities.

William P. Logan, Esq., representing Citizens for Justice, stated that the PAC agrees with the staff recommendation.

Ms. Amero moved to adopt the staff recommendation and reduce the penalty to \$250.

In response to Mr. Duchette's question, Mr. Logan said this PAC was associated with the Maine Trial Lawyers Association and was not an active organization in legislative races.

The motion was seconded by Ms. Matheson and passed (2-1), with Mr. Duchette voting against the motion.

6. Request for Waiver of Late-Filing Penalty – Build Maine PAC (0:14:20)

Mr. Wayne said on June 3, 2014, the Build Maine PAC made a \$1,000 contribution to another PAC, which it was required to disclose the next day in a 24-hour report. The PAC filed the report 48 days late on July 22, 2014. The preliminary penalty amount was \$480. The Build Maine PAC requested a waiver of the preliminary penalty because the PAC was not aware of the 24-hour reporting requirement or that it applied to contributions made to other PACs. Mr. Wayne said although a representative from the PAC could not attend the meeting, the PAC supports the staff recommendation.

Ms. Amero moved to adopt the staff recommendation and reduce the penalty to \$250. Seconded by Mr. Duchette. Motion passed unanimously.

7. Request for Waiver of Late-Filing Penalty – Committee to Rebuild Maine's Middle Class PAC (0:18:43)

Mr. Wayne said that on May 27, 2014, the Committee to Rebuild Maine's Middle Class filed an 11-Day Pre-Primary Report showing no financial activity. In July 2014, the PAC's treasurer learned that the PAC had received significant contributions of in-kind staff time during the period covered by the report. Although the initial report was filed on time, it did not substantially conform to the disclosure requirements and was considered late. The preliminary penalty for the late report was \$5,435.68. The PAC requested a waiver of the preliminary penalty on the grounds that it is disproportionate to the mistakes made.

Rob Walker, representing the PAC, stated that the PAC has no problem with the staff recommendation.

Ms. Matheson moved to adopt the staff recommendation and reduce the penalty to \$500. The motion was seconded by Mr. Duchette and passed unanimously.

8. Request for Waiver of Late-Filing Penalty – Somerset County Democratic Committee (0:21:36)

Mr. Wayne explained that between August 23, 2013 and November 13, 2013, the Somerset County Democratic Committee raised a total of \$2,533. The committee should have filed a Semiannual Report by January 15, 2014, but it did not do so until July 15, 2014. The preliminary penalty equals the statutory maximum of \$500. The Somerset County Democratic Committee requested a waiver of the penalty, arguing that it did not have notice of the need to file and that the penalty is disproportionate to the experience of the treasurer.

In response to a question by Ms. Matheson, Mr. Wayne said there was a requirement in statute (21-A M.R.S.A. § 1013-A(3)) for party committees to submit and update their officer information with the Commission.

Mr. Duchette said, to be clear, that the Commission is not required to send out reminders of the filing deadlines. The reports are deemed late whether a reminder is sent or not.

Colby Seams, treasurer of the Somerset County Democratic Committee, said Democrats in Somerset County were lucky to have a committee. He receives mail only through a post office box in Anson. He said there was no intent to defraud anyone and the reporting error will not happen again. In response to Mr. Duchette's question, he said the reduced penalty of \$100 recommended by staff was better than the preliminary penalty of \$500. He explained that Somerset County is very poor and any penalty feels like punishment for hard-fought fundraising success. He said it will be difficult to take the recommended penalty back to the present committee, if that were the amount assessed.

Ms. Matheson said she would be in favor of waiving the penalty, however a message needs to be sent to the local party committees that their officer lists need to be updated with the Commission. Mr. Duchette agreed, given the timing and how long it went before any report had been filed.

Ms. Matheson moved to reduce the penalty to \$50. Seconded by Mr. Duchette.
Motion passed unanimously.

In consideration of the Commission's practice to address agenda items out of order to accommodate the attendance of public participants regarding particular items, the following agenda item was taken out of order:

10. Proposed Findings of Violation - Candidates not Disclosing Sources of Personal Income (0:35)

Mr. Wayne explained that candidates for legislative office are required to file a statement of the sources of their personal income that they received in the year before the election year. Three candidates for the Maine House of Representatives (Dillon Bates, Kenneth Hoyt, and Mark Lockman) have not filed the statement, after receiving multiple requests by the Commission staff. He said the law does not prescribe any civil penalty for the failure to file the statement.

Mr. Duchette moved to find these three candidates in violation of 1 M.R.S.A. § 1016-D by not disclosing the sources of their 2013 income. Seconded by Ms. Amero. Motion passed unanimously.

Executive Session

Ms. Matheson moved to meet in executive session pursuant to Title 1, section 405(6)(E) to consult with the Commission's Counsel concerning pending litigation. Ms. Amero seconded. Motion approved (3-0). The Commission went into executive session at 9:43 a.m.

At 10:00 a.m., Ms. Matheson moved to come out of executive session. Ms. Amero seconded. Motion approved (3-0).

Other Business – Woodhouse v. Maine Commission on Governmental Ethics & Election Practices

Ms. Matheson stated that the Commission decided to proceed with a proposed settlement of the plaintiffs' claim for attorneys' fees under 42 U.S.C. § 1983.

The Commission resumed the scheduled order of agenda items at this point.

9. Request for Waiver of Late-Filing Penalty – ActBlue Maine PAC (0:40)

Mr. Wayne said ActBlue is a nonprofit organization that operates a website for members of the public to make contributions to Democratic candidates and other committees. ActBlue has registered with the

Commission as ActBlue Maine PAC in order to comply with Maine campaign finance law. It reports its payments to candidates and committees as expenditures. On June 1 and 8, 2014, ActBlue Maine PAC made payments to Maine state candidates and a Maine PAC totaling roughly \$17,400 but did not file 24-Hour Reports of the expenditures. The preliminary penalties for the two late reports are \$1,680.38 and \$16,165.11, respectively. ActBlue requested a waiver, because of the disproportionate size of the preliminary penalties, explaining that the violation was caused by a software problem.

Steven Gold, Esq., General Counsel for ActBlue, said this was a computer problem and believed the harm to the public was extremely minor. The contributions made through ActBlue are intended for candidates and PACs but their role is simply as an intermediary for those funds. These are not contributions to ActBlue directly and Maine law allows for these contributions to be viewed as donations from an individual under the contribution limit requirements.

Kate LaForge, Compliance Manager for ActBlue, said she was responsible for submitting the report. She explained that she was pulling data every day during the 13-day period, and no expenditure was apparent that required the filing of a 24-Hour Report. She said ActBlue learned later that scheduled maintenance of the database interfered with the system's display of data. If the data had shown up correctly, she would have filed a 24-Hour Report.

Mr. Gold explained that this was a first-time maintenance process and going forward these processes will not impact reporting.

In response to a question by Mr. Duchette, Ms. LaForge said the late filing was picked up when the PAC filed the next quarterly report.

Mr. Gold said it would be very rare that ActBlue would receive any donation large enough to trigger a 24-Hour Report. The expenditures made to candidates are aggregates of small contributions received by ActBlue. He said he supports the recommended penalty amount and does not see any issue like this one arising in the future.

Ms. Amero moved to adopt the staff recommendation and reduce the penalties to a total of \$500. Seconded by Mr. Duchette. Motion passed unanimously.

Meeting adjourned at 10:10 a.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director



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Approved:

Minutes of the October 10, 2014, Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: Walter F. McKee, Esq. (Chair); Michael T. Healy, Esq. (by phone); Margaret E. Matheson, Esq.;
André G. Duchette, Esq.; Hon. Richard A. Nass
Staff: Jonathan Wayne, Executive Director; Phyllis Gardiner, Counsel

Commissioner McKee convened the meeting at 2:00 p.m.

The Commission considered the following items:

1. Request for Investigation of Re-Election Campaign of Gov. Paul LePage

Mr. Wayne explained that the Maine Democratic Party filed a complaint alleging that Governor Paul LePage and his staff improperly used state-owned vehicles and equipment to promote the Governor's re-election. The party argues that these activities constitute a contribution to the Governor's campaign that should be disclosed in campaign finance reports.

Mary-Erin Casale, Executive Director for the Maine Democratic Party, said that the Governor's use of a state leased vehicle should be construed as a contribution to his campaign. She noted that three videos were provided for the Commission's review. One of the events in the videos, on September 26, 2014, was for campaign purposes only, not state business. The car would not have been on the road, except for the campaign event. On July 12, 2014, the vehicle was used by the Governor in a parade and not for state purposes. The operation of the vehicle and the cost of fuel should be reported as a contribution to the campaign. She encouraged the Commission to refer to relevant federal law concerning the use of an office-holder's car for campaign purposes.

Ms. Casale said the second matter in the complaint refers to improper use of state resources. In the Governor's registration form on file with the Commission, the campaign had listed the official number of the Governor's Office at the State House. She said that the Governor's Office is using the state email

system for distributing campaign messages, including a message sent the previous day on September 23, 2014. She suggested that the Commission may wish to refer the matter to the Attorney General.

Joshua A. Tardy, Esq., representing the LePage for Governor campaign, disputed the allegations in the complaint. He confirmed that Alex Willette, an employee of the campaign, was in the pictures submitted by the Maine Democratic Party. He was traveling with the Governor, who receives executive protection in a state-issued vehicle through the State Police. He said that the campaign received no contribution, because there were no additional costs to the state in providing this transportation. With regard to the use of state equipment, the Commission should be careful about regulating speech by officials made in the course of their public duties.

Mr. McKee asked if Mr. Tardy's view was that the state vehicle must be used when the Governor is campaigning, and that the use of the car is not a contribution. Mr. Tardy said that the public interest is served by protecting the Governor at all times, particularly during campaign events when his schedule is disclosed to the public in advance. The LePage campaign had investigated whether previous Governors had used campaign funds to reimburse the state for the Governor's travel, and could not confirm those reimbursements.

In response to a question from the Chair, none of the Commissioners expressed any need for further investigation. Mr. McKee explained that he initially had concerns with the use of a state vehicle for campaign purposes such as a parade, but he now had a better understanding of why it occurred. He said that he believed no further investigation was needed to make a determination.

Mr. Nass moved to dismiss the complaint. The motion was seconded by Mr. Healy. Ms. Matheson said that the biggest question for her was whether the use of the vehicle was necessary for security reasons. She believed that the question had been answered sufficiently, so she was prepared to support the motion. The motion passed with four votes in favor and none against. Mr. Duchette abstained because he arrived during the presentations.

2. Request to Investigate Expenditures by Michaud for Congress

Mr. Wayne explained that the Maine Republican Party filed a complaint alleging that Michael Michaud's federal campaign committee (Michaud for Congress) had spent federal campaign funds to promote the election of Rep. Michaud to the office of Governor.

William P. Logan, Esq., representing the Maine Republican Party, said that the Michaud campaign had adequately explained a number of the expenditures by Michaud for Congress and no further action was necessary concerning those expenditures. He urged the Commission to investigate the November 14, 2013 payment of \$500 by Michaud for Congress to the Maine AFL-CIO, the purchase of a personal computer that could be used for purposes of the gubernatorial campaign, and payments for a cell phone.

Matthew McTighe, campaign manager for the Michaud campaign, said the claims were without merit. The contributions refunded by the federal committee are not under the Commission's jurisdiction. He said Rep. Michaud had accepted invitations to speak at Maine AFL-CIO events almost every year since his election to Congress. There was no requirement for him to make any kind of payment or sponsorship. The payment was for an ad in an event publication that was arranged long after the agreement to speak, and was simply a congratulatory message for someone he had worked with for many years. The payment was made to the general fund of the AFL-CIO, and could not be used for political purposes.

Mr. McTighe said that with regard to the cell phone and computer, it is customary for members of Congress to use phones for both personal and political activities, which in Rep. Michaud's case have nothing to do with the gubernatorial campaign. Peter Chandler, of Rep. Michaud's congressional office, explained that – regardless whether Rep. Michaud was running for governor – he would be required to have a “political phone” to perform certain duties as a ranking member of a Congressional committee. These activities include recruiting other candidates, receiving calls discussing business of the Democratic congressional caucus, or calls relating to fundraising

Ms. Matheson moved to dismiss the complaint. The motion was seconded by Mr. Nass, and passed unanimously.

Other Business – Rep. Jeffrey Evangelos’ Request for Additional MCEA funds

Mr. Wayne explained that Rep. Jeffrey Evangelos contacted the Commission because a significant number of his political signs were destroyed or stolen. He used part of his remaining Maine Clean Election Act (MCEA) funds to replace the signs. He is requesting that the Commission make a further payment of MCEA funds to assist him in purchasing a planned advertisement. The Commission discussed that payments of MCEA funds are determined by statute, and that the MCEA does not provide for additional payments to address contingencies such as destroyed or lost campaign materials.

Meeting adjourned at 2:30 p.m. by motion of Mr. Duchette.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director



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Approved:

Minutes of the November 3, 2014, Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: Walter McKee, Esq. Chair; Michael T. Healy, Esq.; Margaret E. Matheson, Esq.; Hon. Richard A. Nass

Absent: André G. Duchette, Esq.

Staff: Jonathan Wayne, Executive Director; Phyllis Gardiner, Counsel

Commissioner McKee convened the meeting at 2:00 p.m.

The Commission considered the following items:

1. Request to Investigate the Maine Wildlife Conservation Council

Mr. Wayne explained that Mainers for Fair Bear Hunting, a ballot question committee supporting Question 1, has filed a request to investigate the completeness of campaign finance reporting by the Maine Wildlife Conservation Council (MWCC), the principal campaign committee opposing Question 1. Mainers for Fair Bear Hunting contends that the MWCC was required to include in its campaign finance reports the donation of paid staff time and other things of value from the Maine Department of Inland Fisheries and Wildlife (IFW). Mr. Wayne said that Mainers for Fair Bear Hunting also brought up an issue regarding possible unreported contributions from the Maine Bowhunters Association to MWCC.

Mr. Healy said that he would like the parties and Mr. Wayne to address whether the Commission has jurisdiction to investigate this matter under section 1003 at some point during the meeting.

Rachel Wertheimer, Esq., representing Mainers for Fair Bear Hunting, stated they were satisfied with the explanation that the \$10,000 donation was actually a series of small donations from the Maine Bowhunters Association to MWCC. She said the real concern is whether staff time contributed by IFW employees constitutes an in-kind contribution that should have been reported by MWCC. She said the requirement is for BQC's to report all contributions including in-kind

contributions in the form of staff time and these in-kind contributions were not reported. She said to be clear, the matter is not about what IFW is allowed to do under the law with regard to educating the public on Department issues. She said the sole issue is whether MWCC should have reported in-kind contributions from IFW for staff time for particular events, such as when IFW staff were featured in certain ads that were paid for, produced and aired by MWCC and when the services of IFW staff were relied upon in the creation of such ads and for other events. She explained that section 1056(B) requires ballot question committees to report all contributions made for the purpose of influencing a campaign. She reviewed other related statutes and rules as well as the Commission's guidebook which explains that if an employer pays its employees to provide services to the BQC, that is an in-kind contribution that is supposed to be reported. Mainers for Fair Bear Hunting has requested an investigation but it does not profess to be aware of all the incidences where IFW staff time was provided to MWCC nor does Mainers for Fair Bear Hunting know the actual value of the services provided. Ms. Wertheimer stated that in review of the Commission's statutes, there appears to be no distinction between employees of public entities and private entities. She said the purpose of the campaign finance law is to increase transparency and public disclosure and it should not make any difference whether the source of contributions is from the private or public sector. She stated that the need for transparency was even greater when public resources are being used for a campaign. The voting public has a right to know. In addressing some arguments raised by counsel for MWCC, Ms. Wertheimer explained that their complaint was not late. The complaint was brought at this time because it is based, in part, on ads that aired in late September and mid-October and which were reported in MWCC's campaign finance reports in mid and late October. The complaint followed in a timely manner from those reporting dates. She said their complaint was focused on what was disclosed in MWCC's reports, not on what was allowed or authorized by law.

Mr. Healy referred to section 1003 and asked whether a State agency is a person under the statute.

Ms. Wertheimer explained that they are not asking the Commission to investigate the IFW. She said MWCC should have records for the value of the work IFW did for MWCC.

Mr. Healy said that the only way to determine the value of the contribution was to know the amount of staff time and the value of the staff time provided by IFW.

Mr. McKee said that Mainers for Fair Bear Hunting was not asking for IFW to disclose the information in campaign finance report but that MWCC should report it.

In response to a question from Mr. Healy, Ms. Wertheimer said that if IFW provided staff to MWCC for campaign purposes and paid the staff for the time they spent providing services to MWCC, that would constitute a contribution even if it was governmental speech.

Ms. Wertheimer said this case is not simply about a public event where IFW employees attended, spoke on an issue and were filmed, and that film was later used for campaign purposes. In this case, IFW provided paid staff to MWCC for the purpose of filming the ads. It was not simply a matter of government speech and the complaint was not whether the provision of paid IFW staff to MWCC was authorized. She said that staff time was a contribution and the question was what was the value of the staff time and other services or items contributed to MWCC.

Ms. Gardiner asked Ms. Wertheimer if she was familiar with the general doctrine often cited by the Law Court that the State or State agency does not fall within the purview of a statute unless the statute expressly names or refers to the State and State agency. She asked Ms. Wertheimer if she thought the reference to "person or organization" in the definition of contribution in section 1052(3)(D) included the State or a State agency, such as IFW, even though the statute does not expressly name the State or State agencies.

Ms. Wertheimer said she had not considered that issue directly since her focus was on the purpose of the statute to provide full disclosure and transparency. In other instances where the Legislature wanted to treat State agencies and employees differently with respect to a statute, the Legislature would draft the law specifically to address that. She said that she did not see anything in the statute on which to base the conclusion that contributions from State agencies should not be disclosed.

Ms. Matheson commented that it seemed that Ms. Wertheimer was proposing a different interpretation of how donated staff time should be treated under section 1056-B. She said that donated staff time would count as a contribution if an organization essentially loaned its staff to act as campaign staff for the ballot question committee.

Ms. Wertheimer responded that the purpose of the disclosure is to reflect where a campaign is getting its support. She said if someone else was paying a State employee to do an activity during work hours for a campaign, it should be reported.

Mr. McKee agreed. He said there is a difference between someone volunteering their own time and an organization paying employees for the time they worked on a campaign for a committee. He asked Ms. Wertheimer whether she had any way of knowing what the value of the donated staff time and other items would be. She said that information was not available to them and a reason why the investigation is necessary.

Mr. Healy stated that he did not believe that the State falls under the statutory definition of person and therefore, the Commission does not have jurisdiction to investigate pursuant to section 1003. The State is not included under section 1003 or section 1052. He said the law does not apply to the State unless the law clearly and specifically says that it does.

In response to a question from Mr. McKee, Ms. Gardiner provided the Commissioners with a brief survey of the Law Court cases in which the Court applied the principle that a statute does not apply to the State unless the State is expressly named in the statute.

Daniel Riley, Jr., Esq., representing the MWCC, said the threshold question is whether a State agency such as IFW is subject to the campaign finance laws. Mr. Riley said the Commission does not have jurisdiction in this case. He said even if it was found to have jurisdiction, it would be an absurd result that his client would have any way to know that they had a legal obligation to report these activities by the IFW employees as in-kind contributions since there was nothing in Maine law that directs them to do so.

Mr. Riley referred to a Commission matter in 2009 with regard to the TABOR Now's request to investigate whether the city of South Portland should have registered as a BQC based on a mailing it sent to taxpayers in South Portland. By a 3-1 vote, the Commission at that time found that the city was a corporation under law and therefore, the city was a person under Title 21-A and would be required to file campaign finance reports if its expenditures exceeded a certain amount. He said the legislative history of Title 21-A provides a solid basis for the view that the Legislature did not intend the State or State agencies to be subject to campaign finance laws. In 1985, the Legislature consolidated three chapters of campaign finance laws into a new Title 21-A. Prior to that, the definition of "person" in one of the chapters included governmental agencies. However, in the re-codified Title 21-A, the definition of "person" omitted governmental agencies. Mr. Riley also noted that in the lobbyist disclosure law in Title 3, the Legislature included specific provisions that applied to employees of State agencies who lobby for those agencies at the Legislature.

Mr. Riley asked the Commission to consider the timing of the filing of the complaint – the day before the election – as an indication that the complainant's motive was to harm MWCC in the public's view. He discussed some of the history of state agency involvement in ballot question elections. He said there is no precedent that would indicate that State agencies have campaign finance reporting requirements. Furthermore, it is unreasonable to assume MWCC would know it was required to report these specific activities as in-kind contributions.

Mr. McKee said that he saw a difference between State agencies going to a public hearing at the Legislature or holding a press conference and State agency staff appearing in a privately-produced advertisement and being paid by the State agency for that campaign activity.

Mr. Riley disagreed. He said the IFW was authorized to do this type of activity. Mr. McKee agreed the IFW has a statutory obligation to educate the public; however, the issue is what the PAC is required to do when it receives in-kind contributions.

Mr. Riley referred to a case that came before the Commission a number of years ago in which the Commission found that a corporation had made an in-kind contribution to a candidate's

campaign by paying its employees to put up campaign signs for that candidate. The key difference to consider is that the corporation's employees' normal work activities did not include putting up campaign signs. One of the normal work activities of IFW employees is to educate the public according to the Department's authorizing statute and the recent Superior Court decision by Justice Wheeler. The IFW employees' activities which are the subject of the complaint are no different than their normal work routine and the Department did not expend any additional funds with respect to those activities. Mr. Riley said that is the distinction in this case.

Mr. Nass asked Mr. Riley whether he thought the amount of the alleged in-kind contributions was de minimis in light of the \$2.2 million spent by MWCC on the campaign so far. Mr. Riley said that it was a small amount. While there is no threshold for reporting in-kind contributions, the real issue is whether MWCC was required to report any of the IFW activities at all.

In response to a comment by Mr. Riley regarding the timing of the complaint, Mr. Healy said that the timing of the complaint and the amount of the in-kind contribution were irrelevant. The statute provides a mechanism for complaints to be filed and for the Commission to hear complaints within 2 days close to an election. The real question for him is whether a contribution by a State agency can be the subject of an investigation if the State agency does not fall within the definition of person and section 1003.

Mr. McKee stated his concern was State employees and State funds were used for promoting a ballot initiative and no disclosure was made. He said the purpose of the disclosure laws is so that the public know who is trying to influence a ballot question and how much is being spent to do so. He said his opinion was the State does fall under the definition of an organization; therefore, MWCC is required to report an in-kind contribution from IFW.

Mr. Healy disagreed and said he does not believe the Commission has jurisdiction because a State agency was not a person for the purpose of campaign finance laws.

Mr. Nass moved not to initiate an investigation. Mr. Healy seconded.

Mr. McKee said that a State agency is an organization and a person for the purpose of campaign finance law. Therefore, if a State agency makes a contribution to a BQC, the BQC must report it.

Mr. Nass said this is clearly a legislative policy issue regarding whether a State agency is subject to campaign finance law because it is included in the definition of "person." However, he said that the Commission does not have the authority to make that determination at this point.

Ms. Matheson said she believes this activity falls under governmental speech which would be difficult to put a value on.

Motion passed 3-1 with Mr. McKee opposing.

By motion of Mr. Nass, the meeting adjourned at 3:22 p.m.

Respectfully submitted,

/s/ *Jonathan Wayne*

Jonathan Wayne, Executive Director